

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

WP(C).No. 24391 of 2005(D)

PETITIONER:

1. MATHAI, AGED 77 YEARS,  
S/O.CHACKO, KUNNATH HOUSE,  
PERUMPILLYCHIRA, THODUPUZHA.
2. S.NARAYANAN NAIR, AGED 69 YEARS,  
S/O.SIVARAMAN NAIR, 'SRINILAYAM',  
KAITHAKODE, VENGALLOORE P.O., THODUPUZHA.
3. THRESSIA, W/O.PAULOSE, AGED 77 YEARS,  
THEKKUMTHADATHIL HOUSE, PETTENADU,  
MUTHALAKODAM P.O., THODUPUZHA.
4. BABU, S/O.VARGHESE, AGED 37 YEARS,  
THANNICKAMATTATHIL HOUSE, VENGALLOORE,  
THODUPUZHA.

BY ADV. SRI.K.K.CHANDRAN PILLAI  
SRI.R.SHYAM KUMAR

RESPONDENTS:

1. THE DISTRICT COLLECTOR,  
IDUKKI, PAINAVU.
2. THE REVENUE DIVISIONAL OFFICER,  
IDUKKI.
3. THE SPECIAL TAHSILDAR,  
(LAND ACQUISITION), THODUPUZHA.
4. THE TAHSILDAR,  
THODUPUZHA.
5. STATE OF KERALA, REPRESENTED BY  
THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 15/12/2006, THE COURT ON 21-12-2006 DELIVERED THE  
FOLLOWING:

**Thottathil B. Radhakrishnan, J.**

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W.P.(C)No.24391 of 2005

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Dated this the 21<sup>st</sup> day of December, 2006.

**JUDGMENT**

Petitioners, small holders, of whom, three are senior citizens and four is the son of a senior citizen have lands abutting the Vengallur Mangattukavala road. Certain portions of their lands are now part of that road following a procedure for widening.

2. Contending that they were duped into executing certain documents, which, later on, were held out to be relinquishments by them, of certain portions of their respective lands in favour of the Government, they moved the Revenue Divisional Officer, Idukki, the competent authority under the Kerala Land Relinquishment Act, 1958, (the "Act", for short) to desist from accepting or acting on the said relinquishments. By Ext.P1 judgment, this Court directed the RDO to consider the said representation after obtaining the views of the concerned Tahsildar. Following that, the RDO considered the materials and

came to the conclusion that the surrender forms cannot be acted upon and that the surrender forms were not even tendered to the RDO but were collected and kept in the village office and forwarded to the RDO after a lapse of six years. The RDO came to the conclusion that there was clear violation of the provisions of the Act and Rules framed thereunder. It was also noticed that the surrender was not made to the RDO in terms of the Rules. On the basis of the elaborate reasons set forth in that regard, the RDO, by Ext.P2 decision, rejected the relinquishment applications of the petitioners. Thus, the grievance of the petitioners against the purported relinquishment by them, stood redressed by the statutory authority, the RDO, coming to the conclusion that the relinquishments cannot be accepted. Such a decision is one authorised by Section 4 of the Act.

3. Thereafter, since the lands were already in the possession of the Government, the petitioners made Ext.P3 representation to the different authorities calling upon them to pay them compensation for the

land, which, for all practical purposes, cannot now be returned, but could be treated as only subject-matter of an acquisition.

4. I may also note immediately that even in Ext.P2, the RDO speaks of a letter of the special Tahsildar dated 29-2-2003 stating that the land acquisition proceedings were actually initiated for the purpose of the aforesaid road.

5. Since no action ensued on Ext.P3, petitioners filed this writ petition and interim order was issued on 20-1-2006 directing the District Collector, Idukki to dispose of Ext.P3. Thereafter, the District Collector passed Ext.P4 order on 18-3-2006, leading to the amendment of the writ petition since the District Collector held that the P.W.D. is not ready to pay any compensation and that the land was surrendered.

6. After the amended writ petition was filed and considered, the following order was issued on 17-10-2006:-

"Having gone through Ext.P4 challenged by the petitioner by amending the writ petition, it is directed that if any among the contesting respondents are advised to place any counter affidavit on record, that shall be done within an outer time limit of three weeks, since, I am of the view that, having regard to the entire facts of the case, it will not be in the interest of the State to further drag on this litigation.

Post after three weeks.

Hand over copy to the learned Govt.Pleader."

7. No further counter affidavit is placed on record.

8. A reference to Ext.P4 would show that none of the relevant facts and provisions of law was considered by the Collector. The relevant laws were not applied.

9. By Ext.P2, the so-called relinquishment made

by the petitioners stood rejected by the RDO. He had the authority to do so under Section 4 of the Act. Sub-section (1) of Section 4 enjoins that the application shall be made to the Revenue Divisional Officer. That was admittedly not done in the case of the petitioners. Sub-section (2) of Section 4 requires that the RDO shall issue notice for consideration of the relinquishment only if he is satisfied, after such enquiry as he thinks necessary, that the person intending to relinquish is competent to relinquish and has the valid title in the land. If notice is so issued and any person interested in the land appears and objects, or after the period fixed for filing the objections runs out, the RDO may pass orders either accepting or rejecting the applications for relinquishment. These statutory provisions will show that Ext.P2 is within the authority of the RDO and cannot be faulted. Not only that, the reasons given in Ext.P2 are quite unassailable. Sections 4-A and 4-B of the Act provides for appeal and revision. The revisional authority, the Board of Revenue, now the Land Revenue Commissioner, cannot, in terms of Section

4-B, exercise revisional powers except as against the appellate order of the District Collector under Section 4-A and the powers to revise cannot be exercised suo motu more, than one year of the decision of the Collector. Going by Section 4-A, the Collector does not have any suo motu power against the order of the RDO. That provision confers only a right of appeal, on a person aggrieved by an order of the RDO accepting or rejecting the application for relinquishment under Sub-section (5) of Section 4 or rejecting the application under Sub-section (6) of Section 4. So much so, the finality of Ext.P2 order of the RDO cannot be impaired by any decision of the Collector in the form of Ext.P4. Hence, the decision in Ext.P4 that the petitioners had already surrendered their land free of cost and later retracted is totally unfounded and uncalled for. The District Collector was not within authority to hold so against the decision of the RDO in Ext.P2.

10. In the aforesaid circumstances, Ext.P4 is liable to be quashed.

11. What now should follow is the required action from the respondents to provide compensation to the petitioners in terms of the Land Acquisition Act for the parcels of land which have been taken possession of from them. Ext.P2 appear to show that Land Acquisition Act was invoked. If it were not, it has to be, since there is no other way of finally resolving the situation in hand because the land taken possession of from the petitioners cannot be returned to them since that has become part and parcel of a public road.

In the result, this writ petition is allowed in the following terms:

(1) Ext.P4 is quashed;

(2) The respondents are directed to ensure that the awards are passed under the Land Acquisition Act, 1894, in relation to the properties taken possession of from the petitioners by determining its extent and the compensation payable. If such properties are not covered by appropriate notifications already issued under the Land Acquisition Act, 1894, the competent among

the respondents would ensure that appropriate notification is issued under that Act and proceedings completed accordingly. If the lands are covered by a notification already issued, the award shall be passed within three months from the date on which the third respondent receives a copy of this judgment. If notification is yet to be issued as aforesaid, such award shall be passed within a period of three months from the commencement of the proceedings for passing the award.

3. It is clarified that all statutory rights of the petitioners under the Land Acquisition Act, 1894, in relation to the said acquisition and award will remain intact and shall not be affected in any manner by these proceedings.

4. Each of the petitioners will be entitled to Rs.500/- as costs of this writ petition, from the fifth respondent to be disbursed alongwith the award amounts that may be due following Direction No.(2) above.

**Thottathi B.Radhakrishnan,  
Judge.**

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